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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.S-55 of 2017

**Appellant** : Ghulam Rasool son of Shahzado Marfani.

**Respondent** : The State.

**Mr.** Shahbaz Ali Brohi, advocate for the appellant.

**Mr.** Ali Anwar Kandhro, Additional Prosecutor General.

Date of hearing : 07-12-2020.

Date of Judgment : 18-12-2020.

J U D G M E N T.

**NAIMATULLAH PHULPOTO, J.-** Ghulam Rasool Marfani appellant was tried by learned II-Additional Sessions Judge, Shikarpur, in Sessions Case No.27 of 2017, arising out of Crime No.02 of 2017, registered at Police Station New Foujdari, Shikarpur. On the conclusion of the trial, vide judgment dated 19.05.2017 the appellant was convicted for offence under Section 24 of Sindh Arms Act, 2013 and sentenced to undergo R.I. for five years and to pay fine of Rs.10,000/-; in case of default in the payment of fine, the appellant was directed to undergo S.I. for five months more. Appellant was extended benefit of Section 382-B, Cr.P.C.

2. Brief facts leading to the filing of the appeal are that on 05.01.2017 ASI Abdul Karim Brohi along with his subordinate staff left police station vide Roznamcha entry No.19, at 0530 hours for patrolling, during patrolling ASI received spy information that accused Ghulam Rasool Marfani wanted in Crime No.08/2008, u/s 324, PPC, Crime No.02/2012, u/s 302, PPC, registered at P.S Golo Daro, Crime No.07/2014, u/s 302, PPC of PS Garhi Yasin and Crime No.06/2012, u/s 324, PPC of PS Dilawar Marfani, being armed with T.T. Pistol, was standing at the link

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road leading from Garhi Yasin to Gawaz Wah. Police party proceeded to the pointed place, at 1630 hours appellant was found armed with one T.T. Pistol of 30-bore; he had no license, as such ASI arrested him in presence of mashirs HC Manzoor Ali and PC Nisar Ahmed. The pistol was found loaded with five live bullets in it's magainze. On personal search of accused, ASI secured Rs.100/- in his front pocket. Mashirnama of arrest and recovery was prepared at spot. Case property was sealed. Thereafter, accused and case property were brought at the police station, where FIR bearing Crime No.02/2017 was registered against the accused on behalf of the State for offence under Section 23(1)(a) of Sindh Arms Act, 2013.

3. After usual investigation, challan was submitted against the accused in this case as well as in main case.

4. Trial Court framed charge against the appellant at Ex.2. Appellant pleaded 'not guilty' to the charge. Prosecution in order to prove its case examined complainant ASI Abdul Karim Brohi (PW-1) and mashir HC Manzoor Ali (PW-2) and I.O./ASI Hafeezullah Jafferri (PW-3). Thereafter, prosecution side was closed.

5. Trial Court recorded statement of accused under Section 342, Cr.P.C, in which he claimed false implication and denied the prosecution allegation of recovery of T.T. Pistol from his possession. Appellant did not lead any evidence in his defence and declined to give statement on oath. Trial Court on the assessment of evidence brought on record convicted and sentenced the appellant, as stated above. Hence this appeal is filed.





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Facts of this case as well as evidence find an elaborate ~~mention~~ in the judgment of the trial Court, hence I avoid repetition and ~~duplication~~.

7. Mr. Shahbaz Ali Brohi, learned advocate for the appellant, ~~mainly~~ contended that all the PWs are police officials; that the appellant ~~was~~ arrested from the main road at 4.00 p.m., but ASI Abdul Karim Brohi ~~did~~ not call independent persons to make them as mashirs in this case. It ~~is~~ further submitted that police officials were highly interested and they ~~had~~ motive to foist the pistol upon the appellant. Lastly, it is submitted ~~that~~ prosecution failed to produce evidence of the safe custody and safe transmission of the crime weapon/pistol to the Ballistic Expert. Mr. Brohi ~~has~~ filed statement at Bar that the appellant has been acquitted in the main case/murder case by the trial Court. In support of his submissions, he has relied upon the cases reported as *KAMAL DIN alias KAMALA v. THE STATE (2018 SCMR 577)*.

8. Mr. Ali Anwar Kandhro, learned Additional Prosecutor General, argued that prosecution has failed to produce evidence with regard to the safe custody and safe transmission of the weapon to the Ballistic Expert, though crime weapon was used in the murder case. Learned Addl. P.G. did not support the impugned judgment passed by trial Court.

9. I have carefully heard the learned Counsel for the parties and scanned entire evidence available on the record.

10. Record reflects that it was a case of spy information. Complainant ASI Abdul Karim Brohi had received spy information that appellant wanted in several cases was available at the pointed place. It





was daytime, no efforts were made by above-named ASI to associate private persons to witness the recovery proceedings, though availability of the private persons during day hours around the place of recovery could not be ruled out. I am conscious of the fact that provisions of Section 103, Cr.P.C are not attracted to the case of personal search, but in the present case, omission to take independent mashirs cannot be brushed aside lightly. After all, preparation of mashirnama is not a formality but it's object is to prevent unfair dealings. It is the case of the prosecution that crime weapon was used by the appellant in the main murder case being Crime No.03/2017. Case proceeded before the trial Court, but prosecution failed to produce the evidence with regard to the safe custody and safe transmission of the weapon to the Ballistic Expert, which is the requirement of law, as held by the Hon'ble Supreme Court in the case of the case of *KAMAL DIN alias KAMALA v. THE STATE (2018 SCMR 577)*. The relevant observations read as under:-

**"4. As regards the alleged recovery of a Kalashnikov from the appellant's custody during the investigation and its subsequent matching with some crime-empties secured from the place of occurrence suffice it to observe that Muhammad Athar Farooq DSP/SDPO (PW18), the Investigating Officer, had divulged before the trial Court that the recoveries relied upon in this case had been affected by Ayub, Inspector in an earlier case and, thus, the said recoveries had no relevance to the criminal case in hand. Apart from that safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory had never been proved by the prosecution before the trial Court through production of any witness concerned with such custody and transmission."**

11. As regards the evidence of the police officials is concerned, no doubt, evidence of the police officials cannot be discarded simply because they belong to police force; however, where the fate of the accused persons hinges upon the testimony of police officials alone, it is



necessary to find out if there was any possibility of securing independent persons at the relevant time. In this case, availability of the private witnesses could have been easily arranged, but it was avoided by the complainant. Accused in his statement recorded under Section 342, Cr.P.C. has claimed false implication in this case. In these circumstances, evidence of the police officials without independent corroboration would be unsafe for maintaining the conviction. Judicial approach has to be cautious in dealing with such evidence, as held in the case of SAIFULLAH V. THE STATE (1992 MLD 984 Karachi). Relevant portion is reproduced as under:-

**"8. The evidence of police officials cannot be discarded simply because they belong to police force. In Qasim and others v. The State reported in PLD 1967 Kar. 233, it was held:**

**"A police officer is as good a witness as any other person. The standard of judging his evidence is the same on which the evidence of any other witness is judged."**

**However, in a case of this nature where the fate of an accused person hinges upon the testimony of police officials alone, it is necessary to find out if there was any possibility of securing independent persons at that time. Judicial approach has to be cautious in dealing with such evidence."**

12. In my considered view, prosecution has failed to prove its case against the appellant. Appellant has been acquitted in main case by trial Court vide judgment dated 17.10.2020. Circumstances mentioned above have created reasonable doubt in the prosecution case. It is settled law that it is not necessary that there should be many circumstances creating doubts. If there is single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession, but as a matter of right. In this regard, reliance can be placed upon the case of MUHAMMAD MANSHA v. THE STATE (2018



SCMR 772), wherein the Honourable Supreme Court has observed as follows:-

*"4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."*

13. In view of what has been discussed above, I have no hesitation to hold that the prosecution has failed to prove its case against the appellant. Keeping in view the above facts and circumstances, the appeal is allowed. Conviction and sentence recorded by the trial Court vide impugned judgment dated 19.05.2017 passed by the learned II-Additional Sessions Judge, Shikarpur, is set aside. Appellant Ghulam Rasool son of Shahzado Marfani is acquitted of the charge, he is directed to be released if not required to be detained in any other case.



18.12.2020  
JUDGE